

REMARKS

The official action of 6 January 2010 has been carefully considered and reconsideration of the application as amended is respectfully requested.

The claims have been amended more clearly to distinguish from the prior art with the recitation that the stirring of the first material mixture is carried out under heating conditions of 40 to 60°C. Support for this amendment can be found in the specification as filed at, for example, page 12, lines 11-14.

The claims have also been amended to remove the bases for the claim objection and for the rejections under 35 USC 112, second paragraph. In particular, the term “oil and fat component” has been amended to “oil/fat” component to make clear that it refers to a single component (rather than to separate oil and fat components). The nature of this component would be clear to one of skill in the art from the specification as filed at, for example, pages 7-8 and the Examples, wherein the component is described/exemplified as including vegetable oils, butter, margarine and shortening. Support for the amendment to claim 6 appears in the specification as filed at page 9, lines 10-12. Support for the amendment to claim 10 appears in the specification as filed at page 6, lines 18-19. All claims as amended are respectfully considered to be sufficiently definite to satisfy the dictates of 35 USC 112, second paragraph.

New claims 31-32 have been added more completely to define the subject matter which Applicants regard as their invention. Support for the functional limitation regarding the enhanced softness or chewability of the claimed product appears in the specification as filed at, for example, page 13, lines 4-25.

The claims stand rejected under 35 USC 103(a) as allegedly being unpatentable over Kim alone or in view of Titcomb. Applicants respectfully traverse these rejections.

The claimed invention is based at least in part upon Applicants’ discovery that it is possible to produce a high-protein product with enhanced softness, chewability and dissolvability by a two-stage process as claimed that includes a separate step of forming a creamy primary product from a first material mixture comprising a protein component, an

oil/fat component and a saccharide component and mixing the creamy primary product with a second material mixture comprising at least an oil/fat component and a saccharide component prior to baking. As discussed in the specification as filed at, for example, page 13, first full paragraph, a high-protein product produced by this process has a softness, chewability and dissolvability that cannot be attained with conventional processes wherein the product is produced by stirring an oil/fat component and then adding the other components or wherein the product is produced by mixing all of the components together at one time.

In accordance with this discovery, all claims of the application now require the step of stirring the first material mixture with heating at the recited temperature to provide a creamy primary product that is then (and only then) admixed with the second material mixture. Kim does not show or suggest all of the recited steps of the claimed process or the product with enhanced softness, chewability and dissolvability that can be obtained therefrom. In particular, Kim does not show or suggest the recited step of forming a creamy primary product with the addition of heat within the recited temperature range before mixing with a second material mixture.

In the Office Action, the Examiner contends that Kim shows the preparation process in Example II. Specifically, on page 6, first paragraph, the Examiner states as follows:

"First the hazelnuts and lactitol monohydrate are blended and ground by means of an almond mill. The hazelnuts inherently contain oil and fat and a protein. Lactitol monohydrate is a sugar alcohol that serves as a saccharide."

This step relates to the preparation step a) of Example II of the Kim reference (Kim at column 3).

Additionally, on page 6, second paragraph, the Examiner states as follows:

"Next, the calcium caseinase, egg, tactitol and salt are whipped separately, This mixture contains fat from the egg. Lactitol serves as the saccharide. This mixture is blended with wheat and the hazelnuts mixture that was pre ground."

This step relates to preparation step b) of Example II of the Kim reference (Kim at column 3).

Additionally, Applicants note that it is disclosed in steps c) to e) in Example II of the Kim reference that the blend of the hazelnuts mixture (a) and wheat flour is blended with the mixture (b) and that the obtained mixture (c) is shaped and baked (Kim at column 4).

As can be seen from a careful examination of the above portions of the Kim reference, Kim does not show or suggest stirring (whipping) the components described/exemplified therein to produce a mixture that is a creamy product. Indeed, in Kim, the ground mixture of step a) is not whipped or heated as would be required to produce a creamy product.

Nor does Kim show or suggest the recited step of stirring the first material mixture under heating conditions of 40 to 60°C. The Examiner contends that Kim teaches using friction rollers for the final grinding step (Example II) and that one of skill in the art would expect heat to be produced from the friction rollers. Even assuming *arguendo* this were true, one of skill in the art would not expect the Kim process to produce the heating conditions as now claimed. It certainly would not **necessarily** produce the claimed creamy product as would be required to support an inherency rationale such as was previously used by the Examiner to support the rejections of claims 2, 8, 9 and 28.

For the above reasons, Applicants respectfully submit that the cited references cannot set forth even a *prima facie* case of obviousness for the invention defined by any of the claims as amended. With particular respect to claims 31 and 32, these claims are additionally distinguishable from Kim in that they recite that the claimed product has a softness or chewability that is enhanced as compared with a product produced, as in Kim, by a process that does not include the step of forming a creamy primary product.

In view of the above, Applicants respectfully submit that all rejections and objections of record have been overcome and that the application is now in allowable form. An early notice of allowance is earnestly solicited and is believed to be fully warranted.

Please charge Account No.12-0425 for any fees which may be due by this paper.

Respectfully submitted,

CLIFFORD J. MASS
LADAS & PARRY LLP
26 WEST 61st STREET
NEW YORK, NEW YORK 10023
REG. No. 30086 TEL.NO. (212) 708-1890